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09/684,032	10/06/2000	Christopher S. Nolan	420-002	1056

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EXAMINER

FOX, CHARLES A.

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

BFC

**Office Action Summary**

Application No.

09/684,032

Applicant(s)

NOLAN, CHRISTOPHER S.

Examiner

Charles A. Fox

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-11, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

Claims 9-11, 19 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 1, 2005. Regarding the arguments against the restriction the applicant is not correct in the assertion that the instant invention is not an apparatus and a method of using the apparatus. The liner is in fact a tool as defined by the applicant for practicing the process as presented in claims 9-11 and 17-20. Also the liner as claimed by the applicant can be used in a materially different process such as being hung as taught by Stopper, Krein or Schloesser et al. all art of record. Therefore the restriction requirement is deemed proper and hereby made final. Due to a typographical error in the restriction requirement claims 17 and 18 were not included. As it is clear they are apparatus claims they are being examined with the elected apparatus claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Fell et al. . In regards to claim 1 Fell et al. (US 3,951,284) disclose a moisture proof liner (20) for a shipping container comprising:

four panels of impervious film to match the top, bottom, and sides of the container;

two end panels to complete the liner;

an access panel in the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

In regards to claim 2 Fell et al. further disclose tubes (45,48) attached to the access openings of the liner (20).

In regards to claims 5 and 6 Fell et al. also disclose access openings for containers having openings on one or more sides depending on the configuration of the container.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1,2,5,6, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. In regards to claim 1 Fell et al. (US 3,951,284) teach a moisture proof liner (20) for a shipping container comprising:

- four panels of impervious film to match the top, bottom, and sides of the container;

- two end panels to complete the liner;

- an access panel in the end of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

- a closure to seal the liner to protect the cargo from moisture.

While Fell et al. do not explicitly teach the opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening at a location in the liner corresponding to where there is an opening in the container.

In regards to claim 2 Fell et al. further teach tubes (45,48) attached to the access openings of the liner (20).

In regards to claims 5 and 6 Fell et al. also teach access openings for containers having openings on one or more sides depending on the configuration of the container.

In regards to claims 13,15 and 17 Fell et al. teach a moisture proof liner (20) for a shipping container comprising:

- Four elongated panels of impervious film to match the top, bottom, and sides of the container;

- two end panels to complete the liner;

an access panel in the side of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

While Fell et al. do not explicitly teach the opening in the elongated side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening at a location in the liner corresponding to where there is an opening in the container, and to not place an opening in a panel that is not adjacent to an opening in the container.

Claims 3,4,12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al as applied to claims 1,2 and 13 as above, and further in view of Krein et al.

In regards to claims 3 and 12 Fell et al. teach the limitations of claim 2 as above, they do not teach the liner and tubes as being a plastic sheet material joined by heat welding of the mating surfaces. Krein et al. (US 5,028,197) teach a plastic liner with joints that are fused together using heat. See column 5 lines 43-57, Krein et al. further teach using a source of air to aid in erecting the liner, said source of air comprising a plurality of orifices.

Regarding claim 4 Fell et al. further teach that the tubes (45,48) are closed with a tie (46) and tucked inside the container (30) during transport.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claim 1 above, and further in view of Derby. Fell et al. teach the limitations of claim 1 as above they do not teach the end panels as

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being folded and heat sealed. Derby US 5,746,862 teaches using a liner for a container with panels having folding gussets (22,24). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the liner taught by Fell et al. with the gussets taught Derby in order to allow easy storage of the liner when not in use as well as making and deployment of the liner easier.

Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claims 13 and 17 above, and further in view of Krein. Fell et al. teach the limitations of claims 13 and 17 as above, they do not teach the liner as being free standing. Krein US 4516,906 teaches a liner (16) for a container (10) wherein the liner is free standing when installed. It would have been obvious to one of ordinary skill in the art, at the time of invention to modify the liner taught by Fell et al. to be free standing as taught by Krein '906 in order to decrease the complexity and time involved for installing the liner thereby making the liner easier to use.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claim 13 above, and further in view of Paton. Fell et al. teaches the limitations of claim 13 as above, they further teach placing the openings of the liner at the same location as the openings in a container the liner is to be installed into. While Fell et al. does not explicitly show a liner with solid ends they suggest one. Paton US 3,456,834 teaches a liner for a rail car wherein it has openings designed to correspond with openings in the container, and as such does not have openings at either of its ends. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the Fell et al. liner with unopened ends as taught by Paton if it were

to be used in a container without open ends as both Fell et al. and Paton teach placing the openings to the liner at openings in the container.

### ***Response to Amendment***

There were no amendments to the claims or specification made in response to the last office action mailed on April 5, 2005.

### ***Response to Arguments***

Applicant's arguments filed September 20, 2004 have been fully considered but they are not persuasive. Regarding applicants arguments against Fell et al. teaching a side opening liner the examiner stands by the previous rejections. Fell et al. does teach placing the liner at the opening of the container. While they only show a rear opening container It would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening of the liner in the side of the liner in order for the opening to correspond to the opening in the container. Fell et al. also teach placing more than one opening in the liner based on there being more than one opening in the container.

Regarding the contention there is no teaching of a liner with opposing openings, the newly cited Paton reference teaches explicitly such openings and the Fell et al. reference suggest them.

Applicants main argument is that one of ordinary skill in the art would not have the ability to modify any of the well known liners such that the opening of the liner would match the opening of the container it was to be placed into. The examiner disagrees as liners are used in a variety of containers with various openings and the liner openings are always placed at the openings in the container. As such it is




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considered obvious to position the liner opening based upon the openings in the container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Charles A. Fox  
Examiner  
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